IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1042 OF 2003

The Employees' State
Insurance Corporation,Mumbai ...Appellant

vs.

M/s.Hotel Monark ...Respondent

Mr.H.V.Mehta for the Appellant
Mr.Uday Warunjikar for the Respondent.

CORAM: A.S.OKA,J.
DATE : JANUARY 29,2007.

P.C.:

1. Heard Shri Mehta for the Appellant and Shri Warunjikar for the first Respondent. An Application made by the first Respondent under section 75 of the Employee's State Insurance Act,1948 challenging the order passed under section 45-A of the said Act has been allowed. Shri Mehta for the Appellant submitted that though the Appellant could not prove the report /notes of inspection, the Trial Court ought to have made an independent enquiry and recorded a finding whether the provisions of the said Act of 1948 were applicable to the establishment of the first Respondent.

2. The order of recovery passed by the Appellant is based on the report submitted by the Deputy Director Shri Y.N.Parate on alleged inspection of the record of the first Respondent. Though the said Shri Parate stepped into witness box on behalf of the Appellant, his further evidence was not recorded as the

said Witness was unable to come from Delhi to attend the court though several adjournments were granted to the Appellant. The finding of fact recorded by the Trial Court is that the contents of the report at Exh.37 are not proved as the said witness Shri Parate did not appear. I find no fault with the said finding recorded by the Trial Court.

3. The Appellant failed to establish the report which was the basis of the demand made. As the very basis was not established, after considering the evidence led by the first Respondent, Trial Court recorded a finding of fact that provisions of the said Act of 1948 were not applicable to the establishment of the first Respondent on the relevant date.

4. No substantial question of law arises. Appeal is dismissed with no order as to costs.

JUDGE